

MEMORANDUM OF LAW

DATE: April 12, 1990

TO: Lawrence B. Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Potential Conflicts of Interest for Retirement
Board Arising from City Budget Reductions

This is in partial response to your memorandum dated February 23, 1990, addressed to Jack Katz.

This memorandum addresses the first question in that memorandum pertaining to potential conflicts of interest faced by the Retirement Board. A response to the second question pertaining to safety members' buy back plans will be addressed by separate correspondence.

BACKGROUND FACTS

The facts were described in your memorandum, as follows:

The City Manager has directed that all non-general fund departments be charged for services rendered by the City, beginning July 1, 1990. These charges to the Retirement System amount to approximately \$320,000 for the 1991 fiscal year. The Retirement Board has the responsibility of approving the System's operating budget, and has engaged in quite a debate on these charges.

QUESTION PRESENTED

Whether any member of or advisor to (e.g., City Attorney) the Retirement Board who is employed by the City and whose department stands to benefit from the above-described charge-back to the Retirement System has a conflict of interest that would disqualify him or her from voting or advising on the Retirement System's budget.

LEGAL ANALYSIS

The applicable law in the present case is the Political Reform Act of 1974 (codified at Government Code section 81000 et seq.) (Act) and Council Policy 000-4 on Ethics.

Government Code section 87100 states when a public official must disqualify him or herself from participating or voting on a governmental decision, as follows. "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason

to know he has a financial interest."

Members of the Retirement Board and advisors thereto, including the City Attorney, are clearly "public officials" within the meaning of Government Code section 87100.

Disqualification under the Act is required, however, if and only if a "financial interest" (as defined by the Act) will reasonably foreseeably be affected materially by the governmental decision at hand.

The financial interests that are of concern in the Act are set forth in Government Code section 87103, as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of

business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is

made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Under the present facts, the type of interest that may pose a conflict for Retirement Board members and advisors is "income" interest as defined in Government Code section 87103(c), because of their employment by the City.

The term "income" under the Act expressly excludes salaries received from local governments. Government Code section 82030(b)(2). Hence, income received from The City of San Diego simply does not count as income under the Act. Therefore, even if a Retirement Board member's own City department may be adversely or beneficially affected by the Board's action on the Retirement System budget, that Board member would not face a conflict of interest that would require disqualification from participating in discussions or votes on the Retirement System's budget. There would be no conflict because that Board member or advisor's City salary does not count as a disqualifying economic interest under the Act.

This discussion would not be complete, however, without mention of Council Policy 000-4 (copy attached). This Council Policy applies to all City employees as well as to all City boards and commissions, including the Retirement Board.

It states in relevant part:

No elected official, officer, appointee or employee of The City of San Diego shall engage in any business or transaction or shall have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his official duties or would tend to impair his independence or judgment or action in the performance of such duties.

This policy is much broader than the Political Reform Act and covers "personal" as well as financial interests. To the extent that a Retirement Board member or advisor who is also a City employee has a personal interest that is so strong that it would

tend to impair his or her judgment in the performance of the Board member or advisor's duties, then that individual should refrain from participating or voting on the Retirement Board's budget. Although it is a highly unlikely scenario, a strong personal interest could arise from voting on the Retirement Board's budget if the result of the budget decision is that a Board member will be laid off from his or her department.

CONCLUSION

There is no financial conflict of interest under the Political Reform Act that would prevent a Retirement Board member or advisor who is also a City employee from participating or voting on the Retirement Board's budget simply because that Board member or advisor's City department may be adversely or beneficially affected by the vote. The Board member or advisor may, however, be required to refrain from participating or voting on the Retirement Board's budget if the Board member or advisor's personal interest is so strong that his or her judgment would be impaired.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:920.8(x043.2)

Attachment

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